IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3629 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ABDUL BODUBHAI PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3629 of 2001

MS BANNA S DUTTA for Petitioner No. 1

MR AR SHAIKH for Petitioner No. 1

MR. K.T.DAVE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the

Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), Commissioner of Police Rajkot City, Rajkot, vide order dated February 3, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. From the averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act and 5 offences under Chapter 17 of the IPC are registered against the petitioner which are pending at investigation stage and statements of two witnesses are recorded in an unregistered offences and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, the petitioner has challenged the detention order on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith. However, Ms. Banna Dutt, learned Advocate for the petitioner has restricted her arguments to the point that the detaining authority has wrongly considered the aspect of taking step under Section 57(c) of the Bombay Police Act which shows total non-application of mind on the part of the detaining authority. Under Section 57(c) of the Bombay Police Act for taking action against a person minimum 3 conviction of a person is required whereas in the present case all the five cases registered under the Prohibition Act are shown pending investigation stage and in none of the cases petitioner is convicted. Therefore, according to the learned advocate it reflect total non-application of mind on the part of the detaining authority and therefore, the order of detention is bad in the eyes of law. She, therefore, urged to allow the petition and prayed to set the petitioner at liberty forthwith.

4. Mr. K.T.Dave, learned AGP has opposed this petition. He, however, does not dispute the factual aspect of the matter that in none of the cases, petitioner has been convicted so far. He, therefore, urged that in the light of settled principles enunciated by this Court, appropriate orders may be passed.

5. I have considered the submissions advanced by the learned Advocates appearing for the parties. I have also

perused the averments made in the petition as well as the impugned order of detention and the documents annexed therewith.

6. On having perusal of the record of the case and the original file, there is no manner of doubt that the detaining authority has taken into consideration in the impugned order about taking step under Section 57(c) of the Bombay Police Act. In view of Section 57 of the Bombay Police Act, for taking action against a person, minimum three convictions are required. Therefore, order of detention reflects that the detaining authority has wrongly considered the aspect of taking step under Section 57(c) of the Bombay Police Act. It shows total non-application of mind on the part of the detaining authority. Therefore, on this sole count, the order of detention stands vitiated and the petition deserves to be allowed.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated February 3, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*